

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 4401 of 2007(Y)

PETITIONER:

P.K.HASHIM, S/O.HAJI.P.K.MOIDU,
AGED 56 YEARS, RESIDING AT 19/112,
NELLIKODE, CHALAPPURAM, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, PUBLIC WORKS
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.
2. THE CORPORATION OF KOZHIKODE,
REPRESENTED BY ITS SECRETARY, KOZHIKODE.
3. THE SECRETARY, KOZHIKODE CORPORATION,
KOZHIKODE.
4. THE CALICUT DEVELOPMENT AUTHORITY,
REPRESENTED BY ITS SECRETARY, KOZHIKODE.

R1 BY GOVT.PLEADER SMT.T.B.RAMANI.

R2 & R3 BY ADV. SRI.P.V.KUNHIKRISHNAN,SC,KOZHIKODE CORPN.

R4 BY ADV.SRI.M.K.ABOOBACKER,SC, CALICUT DEV.AUTY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PIUS C. KURIAKOSE, J.

.....
W.P.(C) No.4401 OF 2007

.....
DATED THIS THE 19TH FEBRUARY, 2007

J U D G M E N T

Ext.P2 order of the Corporation rejecting the application submitted by the petitioner for building permit is under challenge. The main reason stated in Ext.P2 is that as per the approved Town Planning Scheme, the area is earmarked for road development. Mr.A.V.M.Salahuddeen, counsel for the petitioner would submit that currently there is no valid scheme for road development as stated in Ext.P2 and that at any rate no land acquisition proceedings have been initiated so far for the said purpose. Counsel would refer to the judgment of the Supreme Court in **Raju S.Jethmalani v. State of Maharashtra** [(2005) 11 SCC 222] and also to the judgment of the Division Bench of this Court in **Padmini v. State of Kerala** (1999 (3) KLT 465).

2. Sri.P.V.Kunhikrishnan, learned Standing Counsel for the Corporation would submit that the reasons for denial of permit are clearly stated in para.3 of the statement dated 17.2.2007. Mr.M.K.Aboobacker, Standing Counsel for the Calicut Development

Authority would submit that all the reasons mentioned in Ext.P2 are good reasons.

3. Having considered the rival submissions made at the Bar and the principles laid down by the Supreme Court in **Jethmalani's** case and by the Division Bench of this Court in **Padmini's** case, I am of the view that in view of the conceded position that no proceedings under the Land Acquisition Act have been initiated for acquisition of any portion of the petitioner's property or for that matter anybody else's property for the road development contemplated by the Town Planning Scheme, there is no justification for freezing the petitioner's property in this manner indefinitely.

Under these circumstances, the Writ Petition will stand disposed of with the following directions:-

The petitioner is directed to file an affidavit before the Corporation in which he will undertake that in case the Kozhikode Corporation promulgates a notification under Section 4(1) of the Land Acquisition Act for acquisition of the petitioner's property for the road development which is contemplated by the Town Planning Scheme within a period of one and a half years from the date of issuance of the permit, he will remove the constructions to be put up by him on the

strength of the permit to be granted without raising any claim for compensation. Once that affidavit is received by the Corporation, the Corporation will reconsider the petitioner's application for permit, if it is seen that the defects noted as point No.3 in Ext.P2 have been cured, without insisting on any no-objection certificate from the Public Works Department. Fresh orders as directed above will be passed by the Corporation within three weeks of receiving copy of this judgment. In order to enable the Corporation to comply with the above directions, Ext.P2 is quashed. It is made clear that if after the period of one and a half years stipulated above it becomes necessary for the Corporation to acquire the property for any genuine public purposes, this judgment will not stand in way of such acquisition; but under such an eventuality, the Corporation will be liable to pay adequate compensation to the petitioner under the Land Acquisition Act.

(PIUS C. KURIAKOSE, JUDGE)

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